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ABSTRACT

There has long been a discussion on the place of law in citizenship education, but the implementation of law-related materials into civics education in a manner which examines law's role in the social order has been lacking. While educators and lay persons alike seem to agree that the goal of citizenship education is to provide students with the knowledge, skills, and attitudes that will enable them to participate actively in a pluralistic democracy, there is considerable disagreement at the concrete level as to what skills, knowledge, and attitudes should be taught. Students should not be expected to analyze and understand social phenomena if they have no insight into the law and legal systems. They undergird the very political and economic systems that are so often the common topics of citizenship education. The conceptual scheme for that legal content and the topics to be covered merit further consideration. (PPB)

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REACTION TO CITIZENSHIP FOR THE 21ST CENTURY

Legal Content in the Civics Curriculum

Mary Jane Turner

October 1988

Introduction

The purpose of this reaction paper, as I understand it, is not to provide a critique. Rather, it is to set a context for the participants and readers and focus upon questions that relate the content of the paper to the improvement of civic education.

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Overview of Study About Law in American Education

Bruce Campbell argues persuasively in his paper that instruction "about the law" should comprise a significant component of any civics curriculum. Even though this approach has seldom been used in American education, the proposition is not particularly new. The founders of our nation were unanimous in their belief that explicit education for citizenship should not be left to chance or private initiative, but should be taught and nurtured in the educational institutions of the new nation. The literature abounds with their comments discussing the importance of civic education for the success of popular government.

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Thomas Jefferson was able, when he became Governor of Virginia in 1779, to secure the establishment of a professorship of Law and Police--Police in this instance referring to the regulation and government of the inhabitants of a city or county. Jefferson, like many other early educators, considered jurisprudence (which, according to Webster, has to do with the science and philosophy of law) as both an academic study and the initiation of professional training for the practice of law. The "Plan of President Stiles" for Yale University, for example, states that

> The Professorship of Law...is important...not indeed toward educating Lawyers or Barristers, but for forming Civilians. Fewer than a quarter perhaps of the young gentlemen educated at College, enter into either of the learned professions of Divinity, Law, or Physic: The greater part of them after finishing the academic course return home, mix in with the body of the public, and enter upon Commerce or the cultivation of their Estates.... It is greatly owing to the Seats of Learning among us that the arduous conflict of the present day has found America abundantly furnished with Men adequate to the great and momentous Work of constructing new Policies or forms of Government and conducting the public arrangements in the military, naval and political Departments of the whole public administration of the Republic of the United States with the Wisdom and Magnanimity which already astonishes Europe....1

Over the years, unfortunately, training in the law became professionalized in American universities, leaving political science faculties with the responsibility of providing students, including pre-teachers, with whatever insights they were to receive "about the law." The focus of many political scientists was on such matters as political theory, structures of government, political behavior, legal arrangements, and constitutional law. Few departments in the United States offered courses in jurisprudence where students had an opportunity to discuss the origins, nature, functions, and techniques of the law. As a consequence, the civics course

1 "Plan of President Stiles" from original manuscript in Yale University Library.

which became a standard part of the kindergarten through twelfth-grade curriculum after 1916 has been strangely devoid of legal content. The same has been true of the standard American government, economics, and sociology courses.

By the late 1950's, scholars once again began discussing the deficiency. As Campbell has noted, Paul A. Freund, Robert S. Summers, Harry Kalvin, Hans Ziesel, J.D. Appel, H.J. Berman, and others began to write widely, once again promoting the philosophy of law as a necessary and important component of citizenship education. Others took a different approach to legal content. The American Bar Association established the Special Committee on Youth Education which continues to work today, promoting law-related education. Lawyers from around the nation began working with teachers and making presentations in classrooms. Some even helped to write curriculum materials.

A number of organizations--one of which was the Constitutional Rights Foundation--were set up to develop curricula. Many of the curriculum materials that have been produced achieve significant citizenship education objectives. The quality of these materials is, perhaps, best measured by the fact that law-related education is the one of the "special interest" topics that continues to grow and be implemented in the social studies curriculum. More teachers are teaching law-related courses and more students are hearing about legal issues than ever before. Even so, more students graduate with no instruction in legal content than do students who have received some.

It is also important to understand where legal education is typically implemented in the kindergarten through twelfth-grade curriculum and the impact this has on instruction. At the secondary level, there may be one-semester or one-year elective courses, focusing on constitutional, criminal, civil, consumer,

or juvenile law or some mix of these. Legal education may also be taught as a supplementary component of an ongoing course. The interweaving of civics, American government, American history, economics, and law content often leads to a confusing and fragmented instructional program.

For the most part, few of the materials take the approach of examining law's role in the social order. In short, they are not organized to examine the nature, functions, techniques, and limits of law--the approach Campbell recommends.

If the law-related education programs do not generally take this approach, even fewer civics, American history, American government, and economics textbooks do so. As I have suggested, teachers often use the available law-related materials to enrich certain aspects of the content they teach but this approach does not lead to a coherent understanding of law or of the relationship of law to the subject being taught.

The Goal of Civics Education

Educators and lay persons alike seem to agree that the goal of citizenship education should be to provide students with the knowledge, skills, and attitudes that will enable them to participate actively and competently in our pluralistic democracy. Most people believe, as well, that once knowledge, skills, and attitudes are learned people should participate.

What kinds of knowledge and intellectual tools are people talking about in this regard? At the most general level, there is considerable agreement. In order to be a good citizen, one needs to be able to analyze and understand social phenomena

and the relationship of humans to each other, to their environment, and to the institutions of society.

It is when we move to the concrete level that disagreements begin to occur. There is only modest consensus about what knowledge, skills, and attitudes should be taught or about what should be the balance among the three.

It is in this regard that Bruce Campbell's paper becomes so instructive. Does it make sense to expect students to analyze and understand social phenomena if they have no insights about law--the very system that does so much to define the nature of society? How can students understand their relationships to other human beings unless they recognize that it is the law that both constrains license and facilitates freedom of choice? Similarly, if it is important for citizens to have knowledge about the political system and the economic system, should they not also have a basic understanding of the legal arrangements undergirding those systems? If citizens are expected to elect representatives who make law and executives who enforce and put those laws into effect, should we not give students criteria with which they can make sensible judgements, both before and after the fact? In short, should not law constitute a significant part of any well-designed civics curriculum?

These are some of the questions I hope we will address in the discussion period that follows. In addition, I would like you to consider the conceptual scheme for legal content that is proposed for a civics curriculum. The basic premise is that the proper focus should be study about law--its nature, functions, techniques, and limits. Campbell argues this position cogently. Nonetheless, we must decide if other models are equally good. If we conclude that instruction about law is the

best approach, then, we should consider whether the four main topics that are suggested:

Law as a Social Necessity,
How Law Works,
Evaluating Legal Processes, and
Limits of Law

are the best organizers for instruction and the most powerful in achieving the understandings that are sought.